

FIVE-YEAR REVIEW – Questions & Answers

OVERVIEW

ROLES AND RESPONSIBILITIES

COMPONENTS OF THE FIVE-YEAR REVIEW PROCESS

ASSESSING THE PROTECTIVENESS OF THE REMEDY

OVERVIEW

- Q1. If there is more than one ROD for the site, what remedial action would trigger a five-year review?
- A1. Regardless of the number of RODs, the first remedial action that leaves waste on-site would trigger a five-year review (see sections 1.3 and 1.4 of the guidance). For example, the first ROD for a site has a remedy that would remove all contaminated soil and a second ROD with a remedy that will restore ground water to MCLs. The first ROD would not trigger a five-year review but the second would trigger a policy review if the action takes more than five years to complete.
- Q2. Can the type of review change?
- A2. Yes. The type of review is determined at the time that the remedy or action is selected. Subsequent events can change the type of review. For example, if ROD 1 was for the provision of an alternate water supply and did not select a remedy to address groundwater contamination, a statutory review would be triggered. If a subsequent ROD selects a remedy to restore the groundwater, this second remedial action would change the review type from a statutory review to a policy review if the remedy takes more than 5 years to achieve unlimited use and unrestricted exposure.
- Q3. What is the five-year review trigger for a site with monitoring-only or ICs-only as the remedial action?
- A3. As stated in Section 1.3.1 of the guidance, for remedies where on-site mobilization may not occur, the date of the first monitoring event following ROD signature or the ROD signature date (if no monitoring takes place) should be used as the trigger date for the five-year review.
- Q4. Can a five-year review be conducted at a site where one is not required by statute or policy?
- A4. Yes, a review can be conducted at the discretion of the Region at any site. In addition, a review can be done at any site at any time; there is no requirement to wait five years between reviews. The report should always state why the review is being conducted. (See sections 1.2 & 1.2.3).

- Q5. How long does it take to conduct a five-year review?
- A5. Every site is unique but as a general rule it is suggested that a five-year review ***be started*** six to twelve months before the scheduled due date and be completed soon after the site inspection.
- Q6. How much does it cost to conduct a five-year review?
- A6. In many regions, the five-year reviews at non Federal Facility sites are conducted by EPA staff and have no separate cost. Using contractor or the U. S. Army Corps of Engineers' support, the average cost is in the \$20–30K range, but varies depending on the complexity and size of the site. Funds to conduct five-year reviews at fund-lead sites come from the RA AOA and are requested on a site-specific basis. Funding for other sites, such as Federal facilities and PRP-lead sites, is generally provided by the Federal agencies or the PRPs, respectively. (See section 2.1.1.)
- Q7. Can the five-year review require follow-up actions to be implemented?
- A7. The authority to take any action at a Superfund site is in CERCLA and the NCP. The purpose of the five-year review is to evaluate the implementation and performance of the selected remedy and identify if follow-up actions are needed. EPA is required to track follow-up actions that affect the protectiveness of the remedy and report the status of the follow-up actions to Congress.
- Q8. Can a ROD Amendment be considered a five-year review?
- A8. No. Although the process for preparing a ROD amendment may obtain some information that can also be obtained during a five-year review, they are not the same. The ROD amendment is a decision document that identifies the remedy selected to be protective of human health and the environment. The purpose of a five-year review is to evaluate the protectiveness of the selected remedy, not to propose a change in a remedy or select a remedy. In addition, a five-year review report should be a separate document, signed by the Regional Division Director.

Q9. How do five-year reviews apply to a site with a mix of removal and remedial actions that result in hazardous substances remaining on site above levels that allow for unlimited use and unrestricted exposure?

A9. Removal actions are not selected under CERCLA section 121c and therefore do not have a statutory five-year review requirement. However, as a matter of policy, five-year reviews are appropriate at NPL sites that have removal-only actions.

Generally remedial actions take into account and consider any previous removal actions taken at the site. Therefore, if a five-year review is required or appropriate at a site with both removal and remedial actions, the five-year review will by default include the removal action. At these sites with both removal and remedial actions, the five-year review requirement will be triggered by the remedial action not the removal action.

Q10. For removal only sites, does the need to conduct a five-year review differ if the site is a final or proposed site for the NPL?

A10. Yes, a removal-only site must be final on the NPL to trigger the need to conduct a five-year review; a proposed site would not trigger a five-year review (see Section 1.2.2 of the guidance).

Q11. What is a site-wide five-year review?

A11. A site-wide five-year review is developed if the Region makes a decision to prepare one five-year review report that will address all OUs for which a remedy has been selected at a site, as opposed to developing a separate five-year review for each remedy. For most sites, a site-wide five-year review would be appropriate (see section 1.4 of the guidance). For large, complex sites it may be more appropriate to conduct separate five-year reviews for individual OUs or groups of OUs (see section 1.4.2 of the guidance).

ROLES AND RESPONSIBILITIES

Q12. When a site is deferred to RCRA (or another authority), who pays for the five-year review?

A12. A five-year review may not be required under these circumstances; see section 1.5.2 of the guidance for more information on deferral.

Q13. After a site is deleted from the NPL, who pays for follow-up actions identified in subsequent five-year reviews?

A13. Site deletion generally will not affect the decision of who pays for the follow-up actions. If the clean-up was done under a consent decree, the work should generally be done by the PRPs. If the work was fund-financed, the nature of the work will determine who pays. For example, if the work is O&M, generally the state is responsible and should pay for that work.

COMPONENTS OF THE FIVE-YEAR REVIEW PROCESS

Q14. Do all sections of the five-year review report need to be completed?

A14. Yes, for purposes of national consistency, all reports should contain the same sections as provided in the guidance. If there was no information for a specific section or the section does not apply to that five-year review, simply state that this section isn't appropriate or applicable and state the rationale.

Q15. Do we need a five-year review team at every site?

A15. No, the guidance does not require a team at every site, if the RPM has the expertise to conduct the five-year review without technical input from others. However, it is recommended that the RPM work with their Community Involvement Coordinators and, as part of the CERCLA implementation process, the RPM should involve the state as well as any PRPs, if applicable (see Section 3.3 of the guidance).

Q16. Do we need a separate community notification specifically for the five-year review?

A16. No, the minimum community notification is described in section 3.4 of the guidance. The notification can be combined with notifications for other activities at the site.

Q17. Can Technical Assistance Grant/Community Advisory Group (TAG/CAG) funds be used by communities who wish to be involved in the five-year review process?

A17. Yes, it is appropriate to use these funding mechanisms for community involvement during the five-year review.

Q18. What can the Region do to involve the community if the five-year review finds the site not protective or in need of additional work?

A18. The activities will vary depending on the extent of work required and the level of community interest. Potential activities include: public notice regarding the findings of the review and the availability of the five-year review report, fact sheets, specific discussion of the five-year review at regularly-scheduled CAG meetings, and, if warranted, a separate public meeting to discuss the results of the five-year review.

ASSESSING THE PROTECTIVENESS OF THE REMEDY

- Q19. How should optimization be addressed during the five-year review?
- A19. As discussed in section 4.1.2. of the guidance, opportunities for optimization should be identified and recommendations made, as appropriate, for improving remedy performance or reducing remedy costs.
- Q20. When is it appropriate to prepare an Addendum to the five-year review report?
- A20. An addendum should be prepared whenever the protectiveness determination is “not protective” or “protectiveness deferred”.
- Q21. How is an Addendum entered into the five-year review module of CERCLIS/WasteLan?
- A21. This functionality has not yet been developed; all addendum information will be added at a later time.
- Q22. Can an Addendum change the due date for a subsequent 5YR or is the due date still five years after the signature date of the Five-Year Review Report?
- A22. The due date for the next five-year review is five years from the signature date of the report, not the addendum (see section 1.3.3).
- Q23. What issues/recommendations should go in the annual report to HQ?
- A23. Any issues that affect the protectiveness of the remedial action(s) should be included. Other recommendations not affecting protectiveness need not be included. (The new five-year review module of WasteLan may eliminate the need for this annual report.)
- Q24. What language should be used for protectiveness statements?
- A24. The guidance strongly encourages the use of exact language presented in Section 4.5.1 of the June 2001 guidance document. Use of these standard terms will provide clarity and promote national consistency.
- Q25. When is it appropriate to use “will be protective” and “short-term protective”?
- A25. “Will be protective” should be used only when the remedy is still under construction. “Short-term protective” should be used when actions have reduced or eliminated exposure but additional actions must be completed to assure that the remedy remains protective in the long-term.

- Q26. At sites where interim measures have been taken to eliminate exposure, would it be more appropriate to use “short-term protective” as opposed to “will be protective” as the protectiveness statement?
- A26. Yes, short-term protective is the more appropriate statement for interim measures.
- Q27. Under what circumstances would a remedy be considered “not protective”?
- A27. Section 4.5 of the guidance suggests four conditions which generally would render a remedy “not protective”: 1) presence of an immediate threat, 2) uncontrolled migration poses an unacceptable risk, 3) potential or actual exposure is present, and 4) the remedy cannot meet cleanup level and cleanup level is outside the risk range.
- Q28. For an action that is at the RI/FS stage, how would protectiveness be determined?
- A28. A five-year review is not scheduled until after a remedy is selected and a decision document has been signed (i.e., after the RI/FS stage). At the RI/FS stage a remedy has not been selected so a protectiveness determination cannot be made. A discussion of the status of the action at the RI/FS stage would be appropriate in a site-wide five-year review report when a remedy has been selected for another portion (i.e., OU) of a site..
- Q29. When should a site-wide protectiveness determination be made?
- A29. As stated on section 4.5.1 of the guidance, a site-wide protectiveness statement should be developed and made once the site has reached construction completion and a comprehensive statement can be made for all remedies at the site.
- Q30. How do we address removal sites not on the NPL or sites with remedial actions conducted under removal authority?
- A30. Policy reviews are generally only conducted at removal-only NPL sites. If a remedial action is selected under CERCLA 121c authority the five-year review criteria apply; the criteria do not apply for remedial actions selected under removal (CERCLA 106) or other authority. Five-year reviews can be conducted at other removal-only sites at the discretion of the Region.
- Q31. When is it appropriate to do a screening ecological risk assessment?
- A31. As stated in section 4.3 of the guidance, it may be appropriate to conduct a screening ecological risk assessment if ecological risks have not been addressed and there is no plan to address them through a future action.

- Q32. How should redevelopment be addressed in a 5YR?
- A32. Sections 4.2 and 4.3 of the guidance provide information on how to consider changes in land use and other issues related to redevelopment.
- Q33. How should perchlorate be addressed in a 5YR?
- A33. For questions regarding perchlorate, please refer to the memorandum signed by the OSWER Assistant Administrator on January 22, 2003 at:
http://www.epa.gov/swerrims/docs/perchlorate/perchlorate_memo.pdf.